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EXAMINER

KAUFFMAN, BRIAN K

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/829,251

Examiner

Brian K Kauffman

Applicant(s)

LEE, JEONG SIK

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 03 February 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
 - ☒ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: Amended claims do not include markings.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

model thereof. A model received by the examiner from the applicant or his or her attorney which complies with 37 CFR 1.91 and which is made part of the application record must be properly recorded on the "Contents" portion of the application file wrapper. See MPEP § 608.03 and § 608.03(a). >For Image File Wrapper (IFW) processing, see IFW Manual section 3.6.<

Oftentimes a model or exhibit is not given into the custody of the Office but is brought directly into the *>Technology Center< by the attorney solely for inspection or demonstration during the course of the interview. This is permissible. If the model or exhibit is merely used for demonstration purpose and is not made part of the record (does not comply with 37 CFR 1.91), a full description as to what was demonstrated/exhibited must be made of record in the application. See 37 CFR 1.133(b). Demonstrations of apparatus or exhibits too large to be brought into the Office may be viewed by the examiner outside of the Office (in the Washington, D.C. area) with the approval of the supervisory patent examiner. It is presumed that the witnessing of the demonstration or the reviewing of the exhibit is actually essential in the developing and clarifying of the issues involved in the application.

713.09 Finally Rejected Application

Normally, one interview after final rejection is permitted. However, prior to the interview, the intended purpose and content of the interview should be presented briefly, preferably in writing. Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations which would require more than nominal reconsideration or new search should be denied. See MPEP § 714.13.

Interviews may be held after the expiration of the shortened statutory period and prior to the maximum permitted statutory period of 6 months without an extension of time. See MPEP § 706.07(f).

A second or further interview after a final rejection may be held if the examiner is convinced that it will expedite the issues for appeal or disposal of the application.

713.10 Interview Preceding Filing Amendment Under 37 CFR 1.312

After an application is sent to issue, it is technically no longer under the jurisdiction of the primary examiner. 37 CFR 1.312. An interview with an examiner that would involve a detailed consideration of claims sought to be entered and perhaps entailing a discussion of the prior art for determining whether or not the claims are allowable should not be given. Obviously an applicant is not entitled to a greater degree of consideration in an amendment presented informally than is given an applicant in the consideration of an amendment when formally presented, particularly since consideration of an amendment filed under 37 CFR 1.312 cannot be demanded as a matter of right.

Requests for interviews on cases where a notice of allowance has been mailed should be granted only with specific approval of the Technology Center Director upon a showing in writing of extraordinary circumstances.

714 [R-2] Amendments, Applicant's Action

****>37 CFR 1.121. Manner of making amendments in application.**

(a) *Amendments in applications, other than reissue applications.* Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification.* Amendments to the specification, other than the claims, computer listings (§ 1.96) and sequence listings (§ 1.825), must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification, in the manner specified in this section.

(1) *Amendment to delete, replace, or add a paragraph.* Amendments to the specification, including amendment to a section heading or the title of the invention which are considered for

amendment purposes to be an amendment of a paragraph, must be made by submitting:

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs;

(ii) The full text of any replacement paragraph with markings to show all the changes relative to the previous version of the paragraph. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strikethrough cannot be easily perceived;

(iii) The full text of any added paragraphs without any underlining; and;

(iv) The text of a paragraph to be deleted must not be presented with strike-through or placed within double brackets. The instruction to delete may identify a paragraph by its paragraph number or include a few words from the beginning, and end, of the paragraph, if needed for paragraph identification purposes.

(2) *Amendment by replacement section*. If the sections of the specification contain section headings as provided in § 1.77(b), § 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction, which unambiguously identifies the location, to delete that section of the specification and to replace such deleted section with a replacement section; and;

(ii) A replacement section with markings to show all changes relative to the previous version of the section. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived.

(3) *Amendment by substitute specification*. The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification; and

(ii) A substitute specification in compliance with §§ 1.125(b) and (c).

(4) *Reinstatement of previously deleted paragraph or section*. A previously deleted paragraph or section may be reinstated only by a subsequent amendment adding the previously deleted paragraph or section.

(5) *Presentation in subsequent amendment document*. Once a paragraph or section is amended in a first amendment document, the paragraph or section shall not be represented in a subsequent amendment document unless it is amended again or a substitute specification is provided.

(c) *Claims*. Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing*. All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required*. All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn — currently amended."

(3) *When claim text in clean version is required*. The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been

changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

(d) *Drawings.* One or more application drawings shall be amended in the following manner: Any changes to an application drawing must be in compliance with § 1.84 and must be submitted on a replacement sheet of drawings which shall be an attachment to the amendment document and, in the header, labeled "Replacement Sheet." Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. All changes to the drawing(s) shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

(1) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change to the drawings.

(2) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments.* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2), or (c) of this section is not required.

(h) *Amendment sections.* Each section of an amendment document (*e.g.*, amendment to the claims, amendment to the specification, replacement drawings, and remarks) must begin on a separate sheet.

(i) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(j) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(k) *Amendments in provisional applications.* Amendments in provisional applications are not usually made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.<

I. WHEN APPLICANT MAY AMEND

The applicant may amend:

- (A) before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in 37 CFR 1.112;
- (B) after final rejection, if the amendment meets the criteria of 37 CFR 1.116; and
- (C) when and as specifically required by the examiner.

Amendments in provisional applications are not normally made. If an amendment is made to a provisional application, however, it must comply with the provisions of 37 CFR 1.121. Any amendments to a provisional application will be placed in the provisional application file, but may not be entered.

II. MANNER OF MAKING AMENDMENTS

All amendments filed on or after July 30, 2003 must comply with 37 CFR 1.121 as revised in the notice of final rule making published in the *Federal Register* on June 30, 2003 at 65 *Fed. Reg.* 38611. The manner of making amendments has been revised to assist in the implementation of beginning-to-end electronic image processing of patent applications. Specifically, changes have been made to facilitate electronic image data capture and processing and streamline the patent application process. If an amendment filed on or after July 30, 2003 does not comply with revised 37 CFR 1.121, the Office will notify applicants via a Notice of Non-Compliant Amendment that the amendment is not accepted. See MPEP § 714.03.

The revised amendment practice is summarized as follows.

A. Amendment Sections

Each section of an amendment document (e.g., Specification Amendments, Claim Amendments, Drawing Amendments, and Remarks) must begin on a separate sheet to facilitate separate indexing and electronic scanning of each section of an amendment document for placement in an image file wrapper.

It is recommended that applicants use the following format when submitting amendment papers. The amendment papers should include, in the following order:

- (A) a cover sheet, or introductory comments, providing the appropriate application information (e.g., application number, applicant, filing date) and which serves as a table of contents to the amendment document by indicating on what page of the amendment document each of the following sections begin;
- (B) a section (must begin on a separate sheet) entitled "Amendments to the Specification" (if there are any amendments to the specification). This section should include all amendments to the specification including amendments to the abstract of the disclosure;
- (C) a section (must begin on a separate sheet) entitled "Amendments to the Claims" which includes a complete listing of all claims ever presented in the application (if there are any amendments to the claims);
- (D) a section (must begin on a separate sheet) entitled "Amendments to the Drawings" in which all changes to the drawings are discussed (if there are any amendments to the drawings);
- (E) a remarks section (must begin on a separate sheet); and
- (F) any drawings being submitted including any "Replacement Sheet," "New Sheet," or "Annotated Marked-Up Drawings."

B. < Amendments to the Specification

>Amendments to the specification, other than the claims, computer listings (37 CFR 1.96) and sequence listings (37 CFR 1.825), must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification.< In order to delete, replace or add a paragraph to the specification of an application, the amendment must unambiguously identify the paragraph to be modified either by paragraph number (see MPEP § 608.01), page and line, or any other unambiguous method and be accompanied by **>any replacement or new paragraph(s). Replacement paragraphs must include markings to show the changes. A separate clean version of any replacement paragraphs is not required. Any new paragraphs must be presented in clean form without any markings (i.e., underlining)<.

Where paragraph numbering has been included in an application as provided in 37 CFR 1.52(b)(6), applicants can easily refer to a specific paragraph by number when presenting

an amendment. If a numbered paragraph is to be replaced by a single paragraph, the added replacement paragraph should be numbered with the same number of the paragraph being replaced. Where more than one paragraph is to replace a single original paragraph, the added paragraphs should be numbered using the number of the original paragraph for the first replacement paragraph, followed by increasing decimal numbers for the second and subsequent added paragraphs, e.g., original paragraph [0071] has been replaced with paragraphs [0071], [0071.1], and [0071.2]. If a numbered paragraph is deleted, the numbering of the subsequent paragraphs should remain unchanged.

37 CFR 1.121(b)(1)(ii) requires that the **>**full text of any replacement paragraph be provided with markings to show all the changes relative to the previous version of the paragraph. The text of any added subject matter must be shown by underlining the added text. The text of any deleted subject matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show the deletion of five or fewer consecutive characters (e.g., [[eroor]]). The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived (e.g., deletion of the number “4” must be shown as [[4]]). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strike-through, followed by including and underlining the extra text with the desired change (e.g., ~~number 4~~ as number 14 as).

For added paragraphs, 37 CFR 1.121(b)(2)(iii) requires that the full text of any added paragraph(s) be presented in clean form without any underlining. Similarly, under 37 CFR 1.121(b)(2)(iv), a marked up version does not have to be supplied for any deleted paragraph(s). It is sufficient to merely indicate or identify any paragraph that has been deleted. The instruction to delete may identify a paragraph by its paragraph number, page and line number, or include a few words from the beginning, and end, or the paragraph, if needed for paragraph identification<.

Applicants are also permitted to amend the specification by replacement sections (e.g., as provided in 37 CFR 1.77(b), 1.154(b), or 1.163(c)). As with replacement paragraphs, the amended version of a replacement section is required to be provided **>**with markings to show all the changes relative to the previous version of the section. The text of any added subject matter must be shown by underlining the added text. The text of any deleted subject matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show the deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived<.

Applicants are also permitted to amend the specification by submitting a substitute specification, provided the requirements of 37 CFR 1.125(b) >and (c)< are met. An accompanying separate marked up version showing the changes in the specification relative to the previous version is also required.

Any **>**previously deleted paragraph or section< can only be reinstated by a subsequent amendment presenting the previously deleted subject matter. A direction by applicant to remove a previously entered amendment will not be permitted.

C. >< Amendments to the Claims

>Each amendment document that includes a change to an existing claim, including the deletion of an existing claim, or submission of a new claim, must include a complete listing of all claims in the application. After each claim number, the status of the claim must be indicated in a parenthetical expression, and the text of each claim under examination as well as all withdrawn claims (each with markings if any, to show current changes) must be

presented. The listing will serve to replace all prior versions of the claims in the application.

- (A) The current status of all of the claims in the application, including any previously canceled or withdrawn claims, must be given. Status is indicated in a parenthetical expression following the claim number by one of the following: (original), (currently amended), (previously presented), (canceled), (withdrawn), (new), or (not entered). The text of all pending claims under examination and withdrawn claims must be submitted each time any claim is amended. Canceled and not entered claims must be listed by only the claim number and status, without presenting the text of the claims.
- (B) All claims being currently amended must be presented with markings to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim must be shown by strike-through (for deleted matter) or underlining (for added matter) with 2 exceptions: (1) for deletion of five or fewer consecutive characters, double brackets may be used (e.g., [[error]]); (2) if strike-through cannot be easily perceived (e.g., deletion of number “4” or certain punctuation marks), double brackets must be used (e.g., [[4]]). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strike-through, followed by including and underlining the extra text with the desired change (e.g., ~~number 4 as~~ number 14 as). An accompanying clean version is not required and should not be presented. Only claims of the status “currently amended” or “withdrawn” will include markings.
- (C) The text of pending claims not being currently amended, including withdrawn claims, must be presented in clean version, i.e., without any markings. Any claim presented in clean version will constitute an assertion that it has not been changed relative to the immediate prior version except to omit markings that may have been present in the immediate prior version of the claims.
- (D) A claim being canceled must be indicated as “canceled;” the text of the claim must not be presented. Providing an instruction to cancel is optional.
- (E) Any claims added by amendment must be indicated as “new” and the text of the claim must not be underlined.
- (F) All of the claims in each amendment paper must be presented in ascending numerical order. Consecutive canceled or not entered claims may be aggregated into one statement (e.g., Claims 1 – 5 (canceled)).

A canceled claim can be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

Example of listing of claims:

Claims 1-5 (canceled)

Claim 6 (withdrawn): A process for molding a bucket.

Claim 7 (previously presented): A bucket with a handle.

Claim 8 (currently amended): A bucket with a ~~green-blue~~ handle.

Claim 9 (withdrawn): The process for molding a bucket of claim 6 using molten plastic material.

Claim 10 (original): The bucket of claim 8 with a wooden handle.

Claim 11 (canceled)

Claim 12 (previously presented): A bucket having a circumferential upper lip.

Claim 13 (not entered)

Claim 14 (new): A bucket with plastic sides and bottom.<

37 CFR 1.121(g) permits the Office to make amendments to the specification, including the claims, by examiner's amendments without paragraph/section/claim replacement in the interest of expediting prosecution and reducing cycle time. Additions or deletions of subject matter in the specification, including the claims, may be made by instructions to make the change at a precise location in the specification or the claims. >Examiner's amendments do not need to comply with paragraphs (b)(1), (b)(2), or (c) of 37 CFR 1.121.< See MPEP § 1302.04.

**

*>D. < *Amendments to the Drawing*

**>Any changes to an application drawing must comply with 37 CFR 1.84 and must be submitted on a replacement sheet of drawings. The replacement sheet of drawings must be an attachment to the amendment document and must be identified in the top margin as "Replacement Sheet." The replacement drawing sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change to the drawings. A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.<

An explanation of the changes made must be presented in >the "Amendments to the Drawings" or< the remarks section of the amendment >document<. If the changes to the drawing figure(s) are not approved by the examiner, applicant will be notified in the next Office action. **

>III. < **AMENDMENT IN REEXAMINATION PROCEEDINGS > AND REISSUE APPLICATIONS<**

>Amendments in reissue applications must be made in accordance with 37 CFR 1.173. Amendments in *ex parte* and *inter partes* reexamination proceedings must be made in accordance with 37 CFR 1.530.< In patent-owner-filed > *ex parte*< reexaminations, the patent owner may amend at the time of the request for > *ex parte*< reexamination in accordance with 37 CFR 1.510(e). In any > *ex parte*< reexamination proceeding, no amendment or response can be filed between the date of the request for > *ex parte*< reexamination and the order for > *ex parte*< reexamination. See 37 CFR 1.530(a). Following the order for > *ex parte*< reexamination under 37 CFR 1.525 and prior to the examination phase of *> *ex parte*< reexamination proceeding, an amendment may be filed only with the patent owner's statement under 37 CFR 1.530(b). During the examination phase of the > *ex parte*< reexamination proceeding, an amendment may be filed:

- (A) after the first examination as specified in 37 CFR 1.112;
- (B) after final rejection or an appeal has been taken, if the amendment meets the